



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Niknamad

Examiner: Mai

Application Number: 10/ 053979

Art Unit: 3727

Filed 01/19/02

PETITION FEE FOR PETITION FILED HEREWITH

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TECHNOLOGY CENTER R3700



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The Honorable commissioner of Patents:

PETITION TO THE TECHNOLOGY CENTER DIRECTOR UNDER 37CFR 1.181 ©  
TO OVERCOME REQUIREMENT BY THE EXAMINER TO CANCEL NEW MATTER  
A fee of \$ 130.00 is enclosed herewith which is a fee for submitting a  
petition to the Group Director.

PETITION SUMMARY----

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Applicant respectfully petitions to:

JAN 06 2004

- 1./ withdraw a final rejection;
- 2./enter a replacement drawing requested by the Examiner;
- 3./ examine claims 3,4 (the only claims in the case) in the  
light of the replacement drawing.

TECHNOLOGY CENTER R3700

In a first Office Action, mailed July 29, 2003, the Examiner  
stated that he did not understand fig. 2 of the specification and  
therefore was not able to examine the claims 3, 4 in the case.

In response, the Applicant submitted a replacement drawing (figs. 2A,  
2B) to replace the offending drawing fig. 2.

In a second Office Action dated 11/18/03, the Examiner refused to enter the replacement drawing stating that it contained new matter and maintained his position that he could not examine claims 3,4 because the original drawing and description did not support the claim.

The Applicant submits that the replacement drawing and amendment to the specification do not contain new matter and that they fully support the ORIGINAL CLAIMS 3, 4. and that the Application is entitled to an examination of claims 3, 4.

The basis for the Applicants position follows:

The Examiner has disapproved figs. 2A and 2B for containing new matter:

In rebuttal to the statement that the replacement drawings contain new matter, the Applicant respectfully directs attention to the following excerpts from the MPEP:

**MPEP 608.01(I)**

In establishing a disclosure, applicant may rely not only on the description and drawing as filed but also on the original claims if their content justifies it.

Where subject matter not shown in the drawing or described in the description is claimed in the case as filed and such original claim itself constitutes a clear disclosure of this subject matter, then the claim should be treated on its merits and requirements made to amend the drawing and the

description to show this subject matter. The claim should not be attacked either by objection or rejection because this subject matter is lacking in the drawing and description. It is the drawing and description that are defective, not the claim.

It is of course to be understood that this disclosure in the claim must be sufficiently specific and detailed to support the necessary amendment to the drawing and description.

MPEP 706.03(o) ---If subject matter capable of illustration is originally claimed and it is not shown in the drawing, the claim is not rejected but the applicant is required to add it to the drawing.

MPEP 2163.07--

"The claims as filed in the original specification are part of the disclosure and therefore, if an application as originally filed contains a claim disclosing material not in the remainder of the specification, the applicant may amend the specification to include the claimed subject matter (In re Benno, 768 F2d 1340, 226 USPQ 683 (Fed. Cir. 1985))."

In view of these excerpts from the MPEP, the applicant shows below that each of the features shown in replacement drawings fig. 2A, B are supported by the claims as originally filed.

The claims as originally filed:

1.A beverage dispenser for enabling a user to drink from said dispenser which comprises:

a cup, {fig. 2A -feature 10} being a sheet of paper having a thickness, and being substantially rectangular, and having a first pair of opposing edges and a second pair of opposing edges;

said sheet rolled to where one edge of said first pair of edges overlaps and adheres to another edge of said first pair of edges; whereby a truncated cone being side of a cup is formed having a seam {Fig.2A,B-feature 22} of double said thickness formed by said overlapping first pair of edges;

a bottom panel adhered to one edge of said second pair of edges whereby a bottom of said cone is formed enabling said cup to hold said beverage;

another edge of said second pair of edges operably rolled to form a rim {fig. 2B-- feature 18 fig. 2A- features 18A,B} extending around said cone along said another edge of said second pair of edges whereby said cup, being a truncated cone with a closed bottom and open top with a rim, is formed;

a cap {fig. 2A,B - 24} having a drinking aperture and arranged to snap onto said rim enabling a user to drink beverage from said cone through said aperture from said cup;

means for preventing spillage from said beverage dispenser resulting from one of:

(i) formation of a gap between said cap and said rim at a location where said rim meets said seam, said gap, without said means, resulting from a step in said rim formed by said double thickness of said seam in combination with a single thickness of said sheet remote from said location;

said gap resulting in leakage of beverage through said gap when said aperture in said cap is proximal to said gap when said user attempts to drink from said cup through said aperture.

(ii) said aperture in said cap, without said means for preventing, being proximal to a gap between said cap and said rim at a location where said rim meets said seam, said gap

resulting from a step {fig. 2A--feature 20} in said rim formed by said double thickness of said seam in combination with a single thickness of said sheet remote from said location.

2. The beverage dispenser of claim 1 wherein said spillage results from formation of said gap between said cap and said rim at a location where said rim meets said seam.;

said gap resulting in leakage of beverage through said gap when said aperture in said cap is proximal to said gap when said user attempts to drink from said cup through said aperture.

3. The beverage dispenser of claim 1 wherein said means for preventing formation comprises:

a strip {figs. 2A, B--feature 32} of one of paper and polyethylene straddling and adhered along said rim including said location;

said strip secured by a non-toxic sealant;

said strip having feathered edges extending on both sides of said seam;

said cap having sufficient compliance to enable said cap to form a seal along an entire length of said strip.

4. The beverage dispenser of claim 3 wherein said strip has a trapezoidal shape {fig. 2A -- feature 34} operably arranged to provide that the thickness of the rim at the seam has a slope away from both sides of the seam.

The Applicant respectfully submits that the reasons for objection of the replacement drawings figs. 2A,B have been overcome so that the adverse

comments re original drawing fig. 2 are moot. and that claims 3 and 4 should be examined.

The Examiner states:

- A.) The original disclosure does not show the specificities of portion 24: size, location, length, top protrusion.
- B.) The original disclosure does not show the specificities of portion 24: size, the top protrusion.

The Applicant submits:

"Portion 24" is stated on pages 4,5,6 etc. to be a cap for a cup. The opening paragraph of the specification identifies the cup which this invention addresses--""Paper cups are used to hold beverages--coffee, soft drinks, etc., Figs. 1, 5, 6, 7, clearly shows that the cap is a lid to be snapped onto the top of the cup. The original specification goes to great length to discuss the cap snapped onto the rim of the cup. Cups

for dispensing beverages generally come in a several sizes, generally from a half pint size to a quart.

It is submitted that a large portion of the people in the world are familiar with the cups used to dispense beverage. They are certainly familiar with the roll that forms the rim of the cup. Therefore, there should be no uncertainty, in either the original drawings or replacement drawings, as to the size, location, length, top protrusion of "portion 24," -- the cap shown in the drawings.

The Examiner states:

"In view of the disapproval of the proposed drawings, the drawings are objected to under 37CFR1.84"

The grounds for objecting to replacement drawings fig. 2A and 2B have been overcome in view of the remarks above re portion 24. Furthermore, the replacement drawings Figs. 2A and 2B are completely supported by the original claims and ORIGINAL specification which states:

"Fig. 2 is a sectional view showing one embodiment, in which a paper or polyethylene strip 32 straddles and is secured to the lip 18 of the cup 10. The strip is secured by glue, caulk or non-toxic sealant or any safe material to seal the gap and selected to withstand the heat of a hot drink. The edges 34 of the strip 32 extend beyond both ends of the lump or step 20. The edges 34 of the strip 32 are "feathered" or has a trapezoidal shape so



that there is no abrupt step in the rim forming the lip 18 and the cap 24 has sufficient compliance so that the cap 24 forms a tight seal along the entire length of the strip 32. The strip 32 may have a trapezoidal shape providing that, when the strip is wrapped around the rim, any lump has a gradual slope on each end that mitigates against formation of an abrupt step that results in a gap between cap and cup when the cap is mounted on the cup. "

Replacement fig. 2A simply shows the cup and cap BEFORE the strip is attached to the cup and is therefore prior art. Figs. 2A and 2b show cap 24, cup 10 rim 18, seam 22, gap 30 in fig. 2A, and strip 34. All of the features in original figure 1A-C are shown in figs. 2A,B. The strip 32 is shown in original fig. 2 but not as clearly as in replacement figs. 2A, B.

The following paragraph was included as an amendment to the specification in the earlier response and constitute an accurate description of figs. 2A, B. All of the features set forth in these paragraphs are found in the claims as originally filed. Referring back to the excerpts from the MPEP which allows amendments to the specification which are supported by the original claims, please note:

"Fig. 2A,B are sectional views showing one embodiment , in which a paper or polyethylene strip 32 straddles and is secured to the lip 18 of the cup 10.

There are shown the abrupt step 20 formed at the seam 22 between the underlapped portion brim portion 18A and the overlapped brim portion 18B , the height of the step being equal to the thickness of the paper stock from which the cup

is formed. Because of this step the lid 24 cannot engage the entire brim 18A,B and a gap 30 (zone of leakage) is created between the interior of the surface of the cap 24 and the underlapped brim portion 18B. In fig. 2A, a strip 32 of this invention is shown poised for positioning over the gap 30

Fig. 2b shows the strip 32 wrapped around the section of the brim 18 including the gap 30 to provide a more gradual slope to the brim 18 thereby providing a smooth gradual merging of the brim portions 18A and 18B. The cap is thereby enabled to engage in sealing contact the entire length of the brim. "

Regarding remarks in the DETAILED ACTION, OF THE OFFICE ACTION,

Fig. 2A, B show clearly where the crossection shown in fig. 2A,B is taken.  
The step 20 is shown in fig. 2A.

The step 20 is shown in figs. 1C, 2A, 1A, 5A, 13.

The rim 18, (cited in the claim) is clearly shown in fig. 2A, B.

Figs. 1A, 1C , 2A, together with the opening of the first paragraph of the Description of Best Modes show very clearly how protrusion 20 is formed.  
See "Turning now to a discussion of the drawings-----seam 22 in the cup 10"

Portion 32 (the strip) is claimed in original claim 3, shown in figs. 2A, B,

Figs. 2AB are full pictures of the cup as required by the Examiner.

The specification contains specificities which are in the original claims.

It is submitted that the Examiners statements regarding new matter have been overcome. If the Examiner persists in this position, then the Applicant respectfully requests that the Examiner point out "specificities" in the drawings and description that constitute new matter.

The Examiner included a rough drawing to illustrate the contention that the container, as claimed, would not be able to provide a seal along the entire length of the rim.

The Applicant addresses this concern on page 5 which states specifically that the "strip 32 is trapezoidal in shape, or feathered, or the cap is sufficiently compliant with the strip so that when the strip is wrapped around the rim, any lump has a gradual slope on each end the mitigates formation of an abrupt step that results in a gap between cap and cup when the cap is mounted on the cup."

The Examiner has attempted to discredit the concept of the invention by showing a rough drawing of cap, rim and strip where the cap is NOT sufficiently pliant to avoid a gap formed between rim and cap. This condition imposed by the Examiner is contrary to the spirit of the

invention. Anyone having skill in the art would recognize that a cap material could be selected that would be sufficiently compliant to satisfy the requirements of the invention and yet would still provide a gap if the step were abrupt.

It is also clear that the Examiner has not compared the features in the replacement drawings and the amended paragraph of the specification to what was claimed in the original claims. The Applicant has made this comparison as allowed by the MPEP cited above and very respectfully requests that the examiner withdraw the final rejection and proceed with examination of claims 3 and 4.

Respectfully submitted,

Rober Samuel Smith 31,305